



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Green

PATENTS

Serial No. 10/644,531

Group Art Unit: 1733

Filed: 8/21/2003

Examiner: Aftergut

For: AEROSOL CEMENT AND VALVE FOR DISPENSING SAME

RESPONSE UNDER 37 CFR 1.111

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is responsive to the Office Action dated June 15, 2005.

The claims now in the case are claims 1-10.

Claims 1-10 were rejected under 35 USC 102(e) as being anticipated by Johnson for the reasons fully set forth on page 2 of the office Action. This rejection is traversed. In this Section of the statute, the reference must be a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent. The effective filing date of the Johnson patent is 7/28/2000. Applicant's application, Ser. No. 09/347,787 was filed 7/6/99. Applicant's earlier application, Ser. No. 08/920,600 was filed 8/28/97. These applications disclose and claim what is presently being claimed and what is taught by the Johnson patent. Since the Johnson patent was not filed before applicant's invention as evidenced by the earlier filing dates of applicant's parent applications this Section of the statute is not available to be used against applicant and the rejection should be withdrawn.

Claims 1-9 were rejected under 35 USC 102(e) as being anticipated by Macher et al for the reasons set forth on pages 2 and 3 of the Office Action. This rejection is traversed.

In this Section of the statute, the reference must be a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent. The effective filing date of the Macher et al patent is 4/6/2000. Applicant's application, Ser. No. 09/347,787 was filed 7/6/99. Applicant's earlier application, Ser. No. 08/920,600 was filed 8/28/97. These applications disclose and claim what is presently being claimed and what is taught by the Macher et al patent. Since the Macher et al patent was not filed before applicant's invention as evidenced by the earlier filing dates of applicant's parent applications this Section of the statute is not available to be used against applicant and the rejection should be withdrawn.

Claims 1-10 were rejected under 35 USC 103(a) as being unpatentable over Johnson in view of any one of Kitabayashi '203, Kuffer, Green, Abpanalp and Pratt et al. The teachings of these patents and the application of these teachings to the claims is found in the paragraph bridging pages 3-5 of the Office Action. This rejection is traversed.

This rejection fails if the Johnson patent is not a reference under 35 USC 102(e) of the Statute. As pointed out above, the filing dates of applicant's parent applications antedate the effective filing date of the Johnson patent. These prior applications disclose and claim what is presently being claimed. Thus, the Johnson patent cannot be used as a reference against applicant's claims. Without the benefit of the Johnson patent as a

reference the rejection cannot stand. Reconsideration and withdrawal of this rejection is solicited.

Claims 1 and 10 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of applicant's patent No. 6,652,704

Claims 1-10 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of applicant's patent No. 6,654,704 in view of either one of Johnson or Macher et al.

Each of these double patenting rejections is traversed.

The rejection of claims 1-10 is seen to be improper as it relies on patents to Johnson and Macher et al and these patents are not references. See the above discussions under the rejections based on 35 USC 102(e) in this regard.

Nevertheless, in order to advance the prosecution an appropriate terminal disclaimer is being submitted to overcome these two rejections.

In view of the above it is believed that claims 1-10 are now in condition for allowance and a notice to that effect is solicited.

Respectfully Submitted,


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